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IN THE

Supreme Court of the United States

October Term, 1979

No. 79-938

LAVINIA HAGUE, Personal Representative of the Estate of RALPH ALVIN HAGUE, Deceased,

Respondent,

vs.

ALLSTATE INSURANCE COMPANY,

Petitioner.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MINNESOTA

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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MINNESOTA

The petitioner, Allstate Insurance Company, prays that a writ of certiorari issue to review the opinion and judgment of the Supreme Court of the State of Minnesota entered in these proceedings on September 19, 1979.

OPINION BELOW

The order and memorandum of the trial court appears at Appendix C; the opinion of the Minnesota Supreme Court on appeal appears at Appendix B and the opinion of the Minnesota Supreme Court on rehearing appears at Appendix A. Neither opinion of the Minnesota Supreme Court has yet been officially reported.

JURISDICTION

The judgment of the Supreme Court of the State of Minnesota was entered on September 19, 1979. A copy of this judgment appears at Appendix D. The jurisdiction of this Court is invoked under 28 U.S.C. §1257(3).

Cases Sustaining Jurisdiction.

Cases believed to sustain jurisdiction include: *Savchuk v. Rush,* No. 78-952 (Argued October 3, 1979); *World-Wide Volkswagen Corporation v. Woodson,* No. 78-1078 (Argued October 3, 1979); *Clay v. Sun Ins. Office, Ltd.,* 377 U.S. 179 (1964); *Hartford Accident and Indemnity Company v. Delta Pine & Land Co.,* 292 U.S. 143 (1934); *Home Ins. Co. v. Dick,* 281 U.S. 397 (1930).

QUESTION PRESENTED

Should the constitutional mandates of the due process section of the Fourteenth Amendment of the U. S. Constitution and the Full Faith and Credit Clause of the U. S. Constitution, as enunciated by this Court in *Home Insurance Company v. Dick,* 281 U.S. 397, 50 S.Ct. 338 (1930), *Hartford Accident and Indemnity Company v. Delta Pine and Land Company,* 292 U.S. 143, 54 S.Ct. 634 (1934), and *John Hancock Mutual Life Insurance Company v. Yates,* 299 U.S. 178, 57 S.Ct. 129 (1936), be frustrated by the Minnesota Supreme Court's choosing their law to interpret a contract drawn in Wisconsin as it relates to an accident which took place in Wisconsin between Wisconsin residents?

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the due process clause of the Fourteenth Amendment to the United States Constitution and the Full Faith and Credit Clause of the United States Constitution.

Section 1 of the Fourteenth Amendment to the United States Constitution, in pertinent part, provides:

> No State shall . . . deprive any person of life, liberty or property, without due process of law. . . .

Article 4 §1 of the United States Constitution, in pertinent part, provides:

> Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. . . .

STATUTE INVOLVED

The Minnesota Statute involved, in pertinent part, provides:

> §65B.14, Subd. 1—'Policy of automobile liability insurance' means a policy delivered or issued for delivery in this state. . .

STATEMENT OF THE CASE

The following is a stipulated-to statement of the facts which was presented to the Minnesota Supreme Court:

> The cause of action upon which this case is based arises out of an automobile and motorcycle accident which occurred on July 1, 1974 in Pierce County, Wisconsin, which is immediately adjacent to the border near Red Wing, Minnesota. Ralph A. Hague was a passenger on a motorcycle owned and operated by his son, Ronald Hague.
>
> The Hagues were traveling west on Highway 35, and they intended to turn left (to the south) onto a road that led to Elderwood Heights, Wisconsin. They slowed to an eventual stop and signaled their intention to make a left turn. While waiting for an eastbound car to pass in the oncoming or opposite lane, the motorcycle was struck from behind by an automobile owned and operated by Mr. Richard R. Borst, a resident of Ellsworth, Wisconsin. Mr. Ralph A. Hague died as a result of injuries sustained in this accident.
>
> At the time of the accident, Ralph A. Hague resided with his wife, Lavinia Hague, in Hager City, Wisconsin, which is located just one and one-half (1-1/2) miles from

Red Wing, Minnesota. Although Ralph A. Hague resided in Wisconsin, he was employed in Red Wing, Minnesota, and he had been employed in Red Wing for fifteen (15) years immediately preceding his death. After the accident, and prior to the initiation of the above entitled matter, Lavinia Hague moved her residence to Red Wing, Minnesota. On June 19, 1976, almost concurrently with the initiation of this action, Lavinia Hague was married to a Minnesota resident who operated an automobile service station in Bloomington, and established residence with her husband in Savage, Minnesota. The motorcycle which Ralph A. Hague was riding was owned by his son, Ronnie Hague, for about one year prior to the accident.

Ronnie Hague owned other vehicles that were insured by Allstate, but his motorcycle was not insured. Mr. Richard R. Borst was without valid insurance coverage at the time of the accident.

Ralph A. Hague was insured, at the time of the accident, by Allstate, which had issued one policy to the decedent (Policy No. 011 985 43), which policy extended coverage to three automobiles that Ralph A. Hague owned. A separate premium was paid for each such automobile. The policy was effective as of June 8, 1974, and it provided for uninsured motorist coverage to the limits of $15,000.00 for each such automobile.

On the 28th day of May, 1976, the Registrar of Probate for the County of Goodhue, State of Minnesota, appointed Lavinia Hague personal representative of the estate of her deceased husband, Ralph A. Hague. Subsequent to her appointment as personal representative,

> Lavinia Hague initiated the above entitled action against Allstate.
>
> The plaintiff in this action, Lavinia Hague, widow of the deceased, Ralph A. Hague, is suing for declaratory relief construing the above indicated policy so as to "stack" the separate $15,000.00 uninsured motorist coverages on each automobile and therefore afford coverage in the total amount of $45,000.00. Questions of liability and amount of damages are not at issue in this proceeding, only the amount of coverage available. Plaintiff and defendant agree that if Minnesota law governs this case, "stacking" of the uninsured motorist benefits in the insurance policy is applicable.

The record does not reflect anything more about why probate was begun in the State of Minnesota and whether there was one in the State of Wisconsin. At the trial court level, cross motions for summary judgment were brought. The respondent Hague's motion was granted and the petitioner Allstate's motion was denied. Appeal then followed to Minnesota's Supreme Court which, after affirming the trial court, granted a petition for rehearing and then again affirmed the trial court.

REASONS FOR GRANTING THE WRIT

I. THE MINNESOTA SUPREME COURT HAS DECIDED AN IMPORTANT ISSUE OF CHOICE OF LAW IN A MANNER CONTRARY TO CONSTITUTIONAL MANDATES AND TO PRIOR DECISIONS OF THIS COURT.

There is no question but that jurisdiction was available to Minnesota to hear this case. At the time the personal representative brought her action she was a resident of the State of Minnesota, although not a resident of the State of Minnesota at the time of the accident giving rise to the instant action, and there is no question but that Allstate is an insurance company which does business in all fifty states and although principally headquartered in the State of Illinois nevertheless is actively engaged in business in Minnesota. The issue therefore is not jurisdiction, but rather whether Minnesota had the right under the Constitution to choose its law in the circumstances of this declaratory action over that of Wisconsin.

The precise question of law is whether the representative of the estate of Mr. Hague (in actuality the action should have been brought by the trustee of the next of kin under Minnesota state law but the question was ancillary to the court's main decision and they never directly addressed it) should be allowed to "stack" the three $15,000.00 uninsured motorist coverages on Mr. Hague's separate vehicles or whether they are confined to the proceeds of one coverage. It is conceded by the Minnesota court that decisions of Wisconsin courts construing Wisconsin's uninsured motorist insurance statutes would not allow "stacking", while Minnesota decisions would allow the policies to be "stacked". (A-21) There is no dispute by the petitioner that "stacking" would be al-

lowed by Minnesota law. Rather, the issue is whether Wisconsin law, and not Minnesota law, should have been the choice of the Minnesota court.

In the instant case the Minnesota court was asked to interpet a policy of insurance issued in Wisconsin to a Wisconsin resident who was thereafter injured on Wisconsin roads while riding as a passenger with another Wisconsin resident who collides with a third Wisconsin resident. Additionally, the representative bringing this action is the decedent's wife, who was a Wisconsin resident at the time of the accident giving rise to the action and who only brought this action after moving to Minnesota and becoming a Minnesota resident.

This court has indicated in a line of cases that when the state which is the forum state of an issue has contacts which are only "slight and casual" with the dispute which it is hearing, then the forum state should refuse to determine the issue by the choice of its own law. In the instant case, Minnesota's contacts were far more "slight" and "casual" than those of other states which this court has previously reversed in their choice of their own forum's law.

The decision of the Supreme Court of the State of Minnesota is contrary to the following line of U. S. Supreme Court cases, interpreting parties' rights under the full faith and credit clause and the due process clause:

1. *Home Insurance Company v. Dick*, 281 U.S. 397, 50 S.Ct. 338 (1930). The case involved interpretation of an insurance policy which had been issued to a Mexican in Mexico covering a Mexican risk. The policy was subsequently transferred to Mr. Dick, who was a domicilliary of Mexico, but a permanent resident of Texas. The loss occurred in Mexican waters. The Supreme Court held that application of Texas law over Mexican law was a violation of due process under

such circumstance. In so doing they indicated that the residency of Mr. Dick in Texas was of no relevance to the choice law, just as Mrs. Hague's subsequent residency in Minnesota should have nothing to do with Minnesota's choice of law.

2. *Hartford Accident and Indemnity Company v. Delta Pine and Land Company*, 292 U.S. 143, 54 S.Ct. 634 (1934). A fidelity bond was written in Tennessee by Hartford Insurance Company to cover fraud and dishonest acts of the employees of Delta Pine and Land Company. Delta Pine and Land Company and the defaulting employee subsequently moved to Mississippi and the loss on the bond took place in Mississippi. Hartford Insurance Company did business both in the State of Mississippi and the State of Tennessee. Delta Pine's subsequent claim under the bond was not made within the time limitation on actions under the surety contract. The law of the State of Mississippi voided such contract limitations while the law of the State of Tennessee did not void such contract limitations. The action was brought in Mississippi and the Mississippi court indicated that under these facts it would apply its own law and void the contract limitations, thereby ordering Hartford to pay Delta Pine. The U. S. Supreme Court said that the courts of Mississippi could not impose the law of Mississippi and to do so was a violation of due process when Mississippi had such "slight and casual' contact with the transaction, and Tennessee was the state where the contract was negotiated and made.

3. *John Hancock Mutual Life Insurance Company v. Yates*, 299 U.S. 178 (1936). In this case, an action on a life insurance policy was brought. In May of 1932, the John Hancock Mutual Life Insurance Company, a Massachusetts corporation, insured the life of Harmon F. Yates, agreeing to pay upon his death $2,000.00 to his wife. The policy was applied

for, issued and delivered in New York where Mr. Yates and his wife resided, and where they remained until his death of cancer in the following month. Subsequently his widow moved to Georgia and brought in a court of that state a suit on the policy.

John Hancock denied payment on the policy because it contended that answers in the application as to whether the applicant was then in good health and whether he had ever been treated for cancer and other questions had been answered falsely and that these were material misrepresentations which under the law of New York voided the policy. Georgia law indicated that whether the answers given by the insured in the application are material misrepresentations was a matter for the jury and applied its own law over that of New York's and let the matter go to the jury, where the jury awarded the policy benefits.

This court granted certiorari and reversed the Georgia court, indicating that the Georgia court failed to give full faith and credit to the New York statute under such circumstances. This court stated, as the petitioner feels in this case, that:

> Petitioner's right to the protection claimed under the Constitution was denied by the Supreme Court of Georgia. The rights of the petitioner can now be protected only by this court.

Some decisions of this court have allowed application of a forum state's law over that of a contracting state. (*Clay v. Sun Insurance Office Ltd.*, 363 U.S. 207, 80 S.Ct. 1222 (1960); 377 U.S. 179, 84 S.Ct. 1197 (1964), *Watson v. Employer's Liability Insurance Corporation*, 348 U.S. 66, 75 S.Ct. 166 (1954), and certain workers' compensation cases, such as

Pacific Employer's Insurance Company v. Industrial Accident Commission, 306 U.S. 493, 59 S.Ct. 629 (1939). In each of those cases, however, where the court has accepted the forum state's choice of its own law, a significant contact relating to the incident giving rise to the claim, occurred within the forum state. In *Watson* the plaintiff was injured in Louisiana, the forum state, and the forum state allowed direct action suits against the insurer. In *Clay,* the loss occurred in the forum state of Florida and the decedent had been making insurance payments from the State of Florida prior to the loss. In *Pacific Employer's,* California was the forum state and the employee was injured in California.

As indicated before, the only contact with the State of Minnesota in this case is that, after the accident giving rise to the declaratory judgment, the widow moved to Minnesota and began the action. In *Home Insurance Company* (supra), the court indicated that Mr. Dick's residency in the State of Texas, even at times pertinent to the loss, was not a pertinent contact in the consideration of choice of law:

> The fact that Dick's permanent residence was in Texas is without significance. At all times here material, he was physically present and acting in Mexico. Texas was, therefore, without power to effect the terms of contracts so made. Its attempt to impose a greater obligation than that agreed upon, and to seize property in payment of the imposed obligation, violates the guaranty against deprivation of property without due process of law. 281 U.S. 408, 50 S.Ct. 341, 74 L.Ed. 933

If you dismiss the relevancy of the residency of the plaintiff, established after the accident in question, there is virtually no contact with the State of Minnesota. Moreover, in

Delta Pine and Land Company (supra), the event giving rise to the litigation occurred in the forum state and that was not enough contact with the forum state for it to apply its own law. In the instant case we have no incident or contact within the State of Minnesota.

If the Minnesota Supreme Court's decision is to be upheld, then any plaintiff, especially in representative actions such as this, could choose a representative of that state whose laws are most favorable to their version of the case and could expect that the forum state would choose their own law, even if the forum state had had no prior contacts with the matter prior to their citizen-representative bringing the action. The Minnesota Court forthrightly indicated in footnote #6 to their original decision (A-19) that several other state courts have chosen the state of contracting to be dispositive as to choice of law. In footnote #7 (A-20) they concede that the one state court which ruled otherwise had more contacts with the contract than they did in the instant case. After acknowledging this though, they give no reason why they chose to continue to accept Minnesota law in their original opinion and on rehearing. The majority in both decisions entirely avoided the constitutional ramifications of the decision.

Only the strong dissent of Justice Otis (A-2), joined by Justice Peterson, addresses itself to the constitutional issues. Your petitioner agrees entirely with the dissent of Justice Otis and incorporates his dissent by reference in this petition. The clear and precise argument of Justice Otis fell on deaf ears; we pray that this petition will not.

II. THIS CASE IS DISTINGUISHED FROM THAT OF *SAVCHUK v. RUSH*. THE COURT SHOULD NOT DENY CERTIORARI TO THIS CASE THINKING THAT ITS OPINION IN *SAVCHUK v. RUSH* WILL MAKE THE ISSUE MOOT.

The petitioner is aware this court has granted certiorari a second time to the case of *Savchuk v. Rush*, 311 Minn. 480, 245 N.W.2d 624, 630 (1976). At first blush the cases may seem to have a similarity, but they are actually concerned with different issues. The similarity lies in that both cases are brought primarily by insurers questioning the assertion of the Minnesota Court's authority over out of state events.

Savchuk however deals with the constitutionality of a Minnesota statute granting jurisdiction under certain circumstances. In the instant case, the petitioner challenges the constitutionality of the Minnesota Court's choice of its law in the limited situation presented by the facts of the instant case.

The distinction between the two cases is probably eminently clear to this Court, but given the proximity in time to the granting of certiorari to *Savchuk*, the distinction is pointed out lest the court feel their decision in *Savchuk* will render this case moot.

III. THERE ARE PRESENTLY THREE CASES FROM THE STATE OF MINNESOTA PETITIONING FOR A WRIT OF CERTIORARI BEFORE THIS COURT ON THE SAME ISSUE.

The Minnesota Supreme Court has recently been confronted with a trilogy of cases dealing with choice of law. The instant case, *George D. Hime v. State Farm Fire & Casualty Company*, Minn. S. Ct. No. 48078, U. S. S.Ct. ————, and *Lisa Blamey, a minor, by her mother and natural guardian, Shirley Blamey v. Thorwald Brown a/k/a Ted Brown, Ted Brown's Bar and Overshoe Club*, Minn. S. Ct. No. 47917, U.S. S.Ct. 78-1100 have now all petitioned this court for a writ of certiorari. All three cases merit close consideration by this Court, and the fact that the three cases all deal with the same issue gives this court a good opportunity to grant certiorari to all three in order to efficiently update its position on choice of law between competing forums.

SUMMARY

In conclusion then, the imposition of Minnesota's public policy in interpreting insurance policies applied for, issued and delivered in another state in light of an incident occurring in another state, between residents of another state, seems to be an assertion by the Minnesota Supreme Court that they will hold insurers all over the United States to their blanket public policy, even in disputes involving non-residents traveling outside of the State of Minnesota and carrying insurance issued and paid for outside the State of Minnesota. Such an assertion completely erases the rule of comity and violates this Court's interpretation of the full faith and credit and due process provisions of our Constitution. For these reasons, your petitioner prays that this petition be granted.

Respectfully submitted,

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APPENDIX A

No. 44 (1978)

Hennepin County

LAVINIA HAGUE, Personal Representative of the ESTATE OF RALPH ALVIN HAGUE, Deceased,

Respondent,

vs.

ALLSTATE INSURANCE COMPANY,

Appellant.

Yetka, J.
Dissenting, Otis, J. and Peterson, J.
Endorsed
Filed August 31, 1979
John McCarthy, Clerk
Minnesota Supreme Court

Heard before Rogosheske, Todd, and Yetka, JJ., and reheard and decided by the court en banc.

OPINION

YETKA, Justice.

Appellant moved this court for a rehearing after the case was originally heard and decided. The petition having been granted, the case was reheard en banc on December 12, 1978. Upon reconsideration by the court, we are of the opinion that since there was no manifest error of fact, the case was fully argued, and no new issues of fact or of law have been presented, there has been no adequate reason presented to the court which justifies a reversal.

By way of further explanation for its earlier decision, the court is of the opinion that the questions of jurisdiction and conflict of laws must be separated. We are of the opinion that there is no real question of jurisdiction of the Minnesota court. Where plaintiff is a resident of the state and decedent's estate is probated in Minnesota, defendant does business in this state and was properly served with process, the Minnesota court has jurisdiction of the case.

The only remaining question is whether Wisconsin or Minnesota law should be applied on the question of "stacking" insurance coverage. For all of the reasons stated in our original opinion and for the additional reason that contracts of insurance on motor vehicles are in a class by themselves and must be so treated, we believe Minnesota law was properly applied. When an insurance company doing business in a number of states writes a policy on an automobile, the company knows the automobile is a movable item which will be driven from state to state. The company, therefore, accepts the risk that the insured may be subject to liability not only in the state where the policy is written, but also in states other than where the policy is written, and that in many instances those states will apply their own law to the situation. See Clay v. Sun Insurance Office, Ltd., 377 U. S. 179, 84 S. Ct. 1197, 12 L. ed. 2d 229 (1964). Such a contract is not like the usual commercial transaction where the law of the state where the contract is made should and does play a more important role. Application of Minnesota law in this case is, therefore, not so arbitrary and unreasonable as to violate due process.

OTIS, Justice (dissenting).

I agree with the majority that this case presents no serious question of jurisdiction. The only issue is one of choice-of-law. Although I share the view that the Minnesota rule permitting

stacking is better law than the Wisconsin rule which denies it, I cannot accept the position that the application of Minnesota law does not deprive the defendant of a constitutional right to the protection of its "justified expectations." Neither the original opinion nor the supplemental opinion which followed reargument, deals with the constitutional problems inherent in depriving the defendant of the right to invoke the more favorable Wisconsin rule.

Mr. Justice Black and Mr. Justice Brennan have commented on the similarity between the constitutional questions presented in cases dealing with choice of law and those governing jurisdictional problems. In Hanson v. Denckla, 357 U. S. 235, 258, 78 S. Ct. 1228, 1242, 2 L. ed. 2d 1283, 1300 (1958), Mr. Justice Black, dissenting, noted:

> "* * * True, the question whether the law of a State can be applied to a transaction is different from the question whether the courts of that State have jurisdiction to enter a judgment, but the two are often closely related and to a substantial degree depend upon similar considerations."

More recently, in Shaffer v. Heitner, 433 U. S. 186, 224, 97 S. Ct. 2569, 2591, 53 L. ed. 2d 683, 710 (1977) Mr. Justice Brennan, concurring in part and dissenting in part, stated:

> "* * * I recognize that the jurisdictional and choice-of-law inquires are not identical. * * * In either case an important linchpin is the extent of contacts between the controversy, the parties, and the forum State. While constitutional limitations on the choice of law are by no means settled, * * * important considerations certainly include the expectancies of the parties and the fairness of governing the defendants' acts and behavior by rules of conduct created by a given jurisdiction,"

citing Restatement, Conflict of Laws 2d, § 6. The Restatement, § 6, Comment g, defines the problem as follows:

> "*g. Protection of justified expectations.*
>
> This is an important value in all fields of the law, including choice of law. Generally speaking, it would be unfair and improper to hold a person liable under the local law of one state when he had justifiably molded his conduct to conform to the requirements of another state. Also, it is in part because of this factor that the parties are free within broad limits to choose the law to govern the validity of their contract * * * and that the courts seek to apply a law that will sustain the validity of a trust of movables * * *."

The accident which gave rise to this litigation occurred on July 1, 1974, in Pierce County, Wisconsin, when a motorcycle owned and operated by Ronald Hague, on which his father, Ralph Hague, was a passenger, collided with an automobile owned and operated by Richard Borst. Ralph Hague died as a result of that collision. The Hagues, father and son, and Borst, were all residents of Wisconsin at the time of the accident. Both vehicles were licensed and garaged in the State of Wisconsin.

Neither vehicle was covered by insurance. However, the decedent had a single policy of insurance written by the defendant which extended coverage to three automobiles owned by decedent in Wisconsin on which three separate premiums were paid. That policy provided for uninsured motorist coverage up to $15,000 for each of the three automobiles owned by decedent. The insurance contract was entered by the defendant and the decedent in the State of Wisconsin, the premiums were paid in the State of Wisconsin, and the policy was retained in the State of Wisconsin.

The decedent's only connection with Minnesota was his employment in this state, but at no time prior to his death did either he or his family live in this state. His widow subsequently moved to Minnesota following her remarriage. She was appointed representative of his estate in Minnesota, and brought this action against defendant which does business in Minnesota.

In our decision in Van Tassel v. Horace Mann Mutual Ins. Co. 296 Minn. 181, 207 N. W. 2d 348 (1973) our court unanimously held that an insured who pays premiums on more than one policy is entitled to stack the benefits covered by each policy under its uninsured motorist coverage. On the other hand, under the law of Wisconsin as enunciated by its Supreme Court in Nelson v. Employers Mutual Cas. Co., 63 Wis. 2d 558, 217 N. W. 2d 670 (1974) stacking of the kind sought in this case is denied.

At the outset it should be noted that no case has been called to our attention, and we are aware of none, which applies the better choice-of-law principle to a case such as this, where at the time of the occurrence there were no contacts whatever with the forum state other than a place of employment which played no part in the events giving rise to the litigation. The majority relies strongly on our decision in Milkovich v. Saari, 295 Minn. 155, 203 N. W. 2d 408 (1973). In that case we applied Minnesota law rather than the law of Ontario where the parties all resided. However, in so doing we cited as dispositive on the question of Minnesota's interest the fact that the accident occurred in Minnesota as well as the fact that plaintiff was hospitalized for well over a month in this state. We said:

> "The compelling factors in this case are the advancement of the forum's governmental interests and the ap-

> plication of the better law. * * * We might also note that persons injured in automobile accidents occurring within our borders can reasonably be expected to require treatment in our medical facilities, both public and private. In the instant case, plaintiff incurred medical bills in a Duluth hospital which have already been paid, but we are loath to place weight on the individual case for fear it might offer even minor incentives to 'hospital shop' or to create litigation-directed pressures on the payment of debts to medical facilities. Suffice it to say that we recognize that medical costs are likely to be incurred with a consequent governmental interest that injured persons not be denied recovery on the basis of doctrines foreign to Minnesota." 295 Minn. 170, 203 N. W. 2d 417.

Significantly neither of these factors is present in the case before us. The accident did not happen in Minnesota, and whatever economic loss resulted to the decedent's survivors occurred only in the State of Wisconsin.

More nearly in point is our decision in Bolgrean v. Stich, 293 Minn. 8, 196 N. W. 2d 442 (1972). The factors we there specified as determining the applicable law compel a finding in this case that the "center of gravity" is in Wisconsin. In Bolgrean, Minnesota law was applied where the plaintiff was a resident of North Dakota and the accident occurred in South Dakota. The considerations which governed our application of Minnesota law located the "center of gravity" and were described by us as being (1) the state where the driver and the owner of the vehicle causing the injuries was a resident, here Wisconsin; (2) the state where that vehicle was garaged, licensed, and insured, here Wisconsin; (3) the state where the injured party lived most of her life and was a resident at the time of the accident, here Wisconsin; and, (4) the state where

the trip which resulted in the injury was initiated, here Wisconsin. See, 293 Minn. 10, 196 N. W. 2d 444. We further noted in Bolgrean that "the only party concerned with predictability is the insuror of the host's vehicle," *Id.*, here the defendant. That insuror, we said, must be assumed to have charged rates applicable to the state of the owner's residence, again the State of Wisconsin.

Every factor which governed our decision in Bolgrean applies to the facts of the instant case, plus two additional elements not present in Bolgrean, namely the fact the decedent was not a resident of the forum state and the accident did not occur in the forum state.

It seems to me wholly inconsistent for us now to ignore all of the criteria we set forth in Bolgrean. The only question in Bolgrean and Milkovich was whether Minnesota had sufficient interest in the litigation to apply this state's better rule of law. Bolgrean makes clear the conditions under which we will apply the Minnesota law in derogation of the law of a different state and I submit none of those conditions has been met in the instant case.

Only passing reference is made by the majority to the decisions of the U. S. Supreme Court which deal with the constitutional problems involved in applying the better rule of law. Lest there be any doubt about the viability of Home Ins. Co. v. Dick, 281 U. S. 397, 50 S. Ct. 338, 74 L. ed. 296 (1930) and Hartford Accident and Indem. Co. v. Delta & Pine Land Co. 292 U. S. 143, 54 S. Ct. 634, 78 L. ed. 1178 (1934) both of those cases were referred to and distinguished in Clay v. Sun Insurance Office, Ltd., 377 U. S. 179, 84 S. Ct. 1197, 12 L. ed. 2d 229 (1964).

In Dick, the Supreme Court held that an insuror was denied due process where a Texas statute of limitations permitted

a fire insurance claim to be made against the insuror in a Texas court, at a time when the claim was barred by a statute of limitations in Mexico where the loss occurred.

In the Hartford case, a Connecticut insuror contracted with a Mississippi corporation in Tennessee for a fidelity bond which required claims to be made within 15 months after termination of the suretyship. A Mississippi court struck down that condition and was reversed by the U. S. Supreme Court, which held:

> "The Mississippi statutes, so construed, deprive the appellant of due process of law. A state may limit or prohibit the making of certain contracts within its own territory * * *; but it cannot extend the effect of its laws beyond its borders so as to destroy or impair the right of citizens of other states to make a contract not operative within its jurisdiction, and lawful where made. * * * Nor may it in an action based upon such a contract enlarge the obligations of the parties to accord with every local statutory policy *solely upon the ground that one of the parties is its own citizen.*
>
> "* * * [A state] may not, on grounds of policy, ignore a right which has lawfully vested elsewhere, if, as here, the interest of the forum has but slight connection with the substance of the contract obligations. * * * A legislative policy which attempts to draw to the state of the forum control over the obligations of contracts elsewhere validly consummated and to convert them for all purposes into contracts of the forum regardless of the relative importance of the interests of the forum as contrasted with those created at the place of the contract, conflicts with the guaranties of the Fourteenth Amend-

ment." 292 U. S. 149, 54 S. Ct. 636, 78 L. ed. 1181. (Citations omitted, italics supplied.)

The residence element on which the majority in this case strongly relies was brushed aside in the Dick case where the Supreme Court said:

> "* * * The fact that Dick's permanent residence was in Texas is without significance. At all times here material, he was physically present and acting in Mexico. Texas was, therefore, without power to affect the terms of contracts so made. Its attempt to impose a greater obligation than that agreed upon, and to seize property in payment of the imposed obligation violates the guaranty against deprivation of property without due process of law." 281 U. S. 408, 50 S. Ct. 341, 74 L. ed. 933.

In the instant case the plaintiff was at all times here material physically present in Wisconsin. In denying recovery in the Dick case the court held that Texas "may not abrogate the rights of parties beyond its borders having no relation to anything done or to be done within them." 281 U. S. 410, 50 S. Ct. 342, 74 L. ed 935.

What is to me the key issue, the after-the-fact residence of plaintiff in Minnesota, was unequivocally treated as "without significance" in the Dick case. That conclusion was reaffirmed in the Clay case where a unanimous court stated that the Hartford and Dick decisions "were cases where the activities in the state of the forum were thought to be too slight and too casual as in the * * * [Hartford case], to make the application of local law consistent with due process, *or wholly lacking*, as in the Dick case." 377 U. S. 181, 84 S. Ct. 1198, 12 L. ed. 2d at 231-32. (Italics supplied.) A footnote quotes, among other things, the sentence set forth above that "the fact that Dick's permanent residence was in Texas is without significance."

377 U. S. 182 n. 5, 84 S. Ct. 1199, 12 L. ed. 2d 232. In the light of the Supreme Court's recent approval of that rule, giving no effect whatever to after-the-fact residence, I submit that the underpinnings of the majority rule have no constitutional support. In justifying the application of Minnesota law to a Wisconsin accident involving Wisconsin residents, the original majority opinion recites, among other things:

> "Minnesota contacts with the facts of the case begin with plaintiff's residence at the time of suit * * *. Thus, as the 'justice administering state' Minnesota has at least one significant contact.
>
> * * * * *
>
> "The Minnesota interest in full compensation for her residents injured by uninsured motorists is sufficient to allow the application of Minnesota law if otherwise warranted." Hague v. Allstate Insurance Co. —— N. W. 2d ——, ——, —— (Minn. 1978).

If, as the United States Supreme Court has consistently held, residence of a party is not to be considered in choice-of-law cases, clearly there is nothing left on which to base the application of Wisconsin law in this case.[1]

The rights of this defendant, which are in my opinion constitutionally protected, were vested at the time it entered

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[1] Both the dissent and footnote 2 of the original majority opinion refer to Savchuk v. Rush, 311 Minn. 480, 245 N.W.2d 624 (1976). That case also dealt with after-the-fact residency for purposes of acquiring jurisdiction. On appeal to the U. S. Supreme Court the judgment of our court was vacated and the case remanded (433 U. S. 902, 97 S. Ct. 2964, 53 L. ed. 2d (1086 [1977]) for further consideration in light of Shaffer v. Heitner, 433 U. S. 186, 97 S. Ct. 2569, 53 L. ed. 2d 683 (1977). On remand, the majority of this court adhered to its prior decision, 272 N. W. 2d 888 (Minn. 1978). On February 21, 1979, the U. S. Supreme Court noted probable jurisdiction, 99 S. Ct. 1211 (1979), but has not yet rendered its decision.

its contract for insurance with the decedent in Wisconsin prior to July 1, 1974. At that time stacking had been held unavailable by the Wisconsin court in its Nelson decision filed May 20, 1974. Defendant had a right to rely on that decision in fixing its rates and in actuarially assessing its exposure. Where the contract was entered into in Wisconsin by Wisconsin residents, who were exposed primarily to Wisconsin hazards, and the loss which could be anticipated did in fact occur in Wisconsin and was wholly unrelated to the hazards of any other state, defendant had a right to rely on the application of Wisconsin law. The Restatement, Conflict of Laws 2d, § 188, Comment b, states the case well:

> "* * * Parties entering a contract will expect at the very least, subject perhaps to rare exceptions, that the provisions of the contract will be binding upon them. Their expectations should not be disappointed by application of the local law rule of a state which would strike down the contract or a provision thereof unless the value of protecting the expectations of the parties is substantially outweighed in the particular case by the interest of the state with the invalidating rule in having this rule applied. The extent of the interest of a state in having its rule applied should be determined in the light of the purpose sought to be achieved by the rule *and by the relation of the transaction and the parties to that state* * * *." (Italics supplied.)

Granted that the Minnesota rule of law is better, in the absence of any substantial interest by this state in the subject of the litigation, our intrusion into the rights of those who have transacted business in good faith elsewhere verges on

meddling in the judicial policy of a sister state if we deny the legitimate expectations of a contracting party by applying Minnesota law on the fragile grounds here asserted.

Accordingly, I would reverse.

PETERSON, Justice (dissenting) .

I join in the dissent of Mr. Justice Otis.

APPENDIX B

(Caption)

SYLLABUS

1. Where both parties were properly residents of the state of Minnesota at the time suit was brought, Minnesota is a proper state in which to try the action where there is no inconvenience to witnesses, where plaintiff-decedent had worked 15 years in the state of Minnesota and driven across the Minnesota-Wisconsin border to his employment in Minnesota, were a probate representative of the decedent was appointed in Minnesota, and where the decedent's representatives were not parties to the contract of insurance between the decedent and the insurance company.

2. Minnesota law was properly applicable to the case on the test set forth in Milkovich v. Saari, 295 Minn. 155, 203 N. W. 2d 408 (1973).

Affirmed.

Heard before Rogosheske, Todd, and Yetka, JJ., and considered and decided by the court en banc.

OPINION

YETKA, Justice.

Appeal by defendant, Allstate Insurance Co., from an order of the Hennepin County District Court granting plaintiff

Lavinia Hague's motion for summary judgment and denying defendant's motion to dismiss.[1] We affirm.

The facts are not in dispute. The cause of action upon which this case is based arises out of an automobile and motorcycle accident which occurred on July 1, 1974, in Pierce County, Wisconsin, which is immediately adjacent to the border near Red Wing, Minnesota. Ralph A. Hague was a passenger on a motorcycle owned and operated by his son, Ronald Hague.

The Hagues were traveling west on Highway No. 35, and they intended to turn left (to the south) onto a road that led to Elderwood Heights, Wisconsin. They slowed to an eventual stop and signaled their intention to make a left turn. While waiting for an eastbound car to pass in the oncoming or opposite lane, the motorcycle was struck from behind by an automobile owned and operated by Mr. Richard R. Borst, a resident of Ellsworth, Wisconsin. Mr. Ralph A. Hague died as a result of injuries sustained in this accident.

At the time of the accident, Ralph A. Hague resided with his wife, Lavinia Hague, in Hager City, Wisconsin, which is located just 1 1/2 miles from Red Wing, Minnesota. Although Ralph A. Hague resided in Wisconsin, he was employed in Red Wing, Minnesota, and he had been employed in Red Wing for 15 years immediately preceding his death. After the accident, and prior to the initiation of the above entitled matter, Lavinia Hague moved her residence to Red Wing, Minnesota. On June

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[1] An order granting summary judgment is not appealable. Rule 103.03, Rules of Civil Appellate Procedure; Johnson and Peterson, Inc. v. Tookey, 288 Minn. 362, 184 N. W. 2d 586 (1971). The trial court did not certify the question as important and doubtful. No judgment appears in the record and thus if the case were dismissed judgment would be entered and appeal time would then run. Because that course would simply delay the proceedings, the court exercises its discretionary review under Rule 102 and 105.01. Morgan Co. v. Minnesota Mining and Mfg. Co., —— Minn. ——, 246 N. W. 2d 443 (1971).

19, 1976, almost concurrently with the initiation of this action, Lavinia Hague was married to a Minnesota resident who operated an automobile service station in Bloomington, and established residence with her husband in Savage, Minnesota. The motorcycle which Ralph A. Hague was riding was owned by his son, Ronnie Hague, for about 1 year prior to the accident.

Ronnie Hague owned other vehicles that were insured by Allstate, but his motorcycle was not insured, Mr. Richard R. Borst was without valid insurance coverage at the time of the accident.

Ralph A. Hague was insured, at the time of the accident, by Allstate, which had issued one policy to the decedent (Policy No. 011 985 43), which policy extended coverage to three automobiles that Ralph A. Hague owned. A separate premium was paid for each such automobile. The policy was effective as of June 8, 1974, and it provided for uninsured motorist coverage to the limits of $15,000 for each such automobile.

On May 28, 1976, the Registrar of Probate for the County of Goodhue, State of Minnesota, appointed Lavinia Hague personal representative of the estate of her deceased husband, Ralph A. Hague. Subsequent to her appointment as personal representative, Lavinia Hague initiated the above entitled action against Allstate.

The plaintiff in this action, Lavinia Hague, widow of the deceased, Ralph A. Hague, is suing for declaratory relief construing the above indicated policy so as to "stack" the separate $15,000 uninsured motorist coverages on each automobile and therefore afford coverage in the total amount of $45,000. Questions of liability and amount of damages are not at issue in this proceeding, only the amount of coverage available. Plain-

tiff and defendant agree that if Minnesota law governs this case, "stacking" of the uninsured motorist benefits in the insurance policy is applicable.

Plaintiff's position is that:

(1) Minnesota courts have personal jurisdiction over all of the parties herein because plaintiff is a resident of Minnesota and was so prior to the commencement of this action, and defendant does business within Minnesota and is subject to personal service in this state.

(2) Under the choice of law doctrine adopted by Minnesota courts, Minnesota law should be applied to the question of "stacking" the uninsured motorist provisions of the automobile insurance policy under which Ralph A. Hague was insured.

Defendant's position is that:

(1) The question of "stacking" should be determined by the Wisconsin courts, since the accident took place in Wisconsin, and involved all Wisconsin residents, and

(2) Wisconsin courts have not yet determined the question of "stacking" under its new law and former decisions under the old law held against "stacking."

The issues presented by this appeal are:

(1) Did the trial court abuse its discretion in refusing to dismiss the complaint on the ground of forum non-conveniens?

(2) Does Minnesota or Wisconsin law apply to determine whether uninsured motorist coverage may be "stacked"?

We have three choices for a decision in this case: (1) We could hold that clearly the case ought to be declined in Minnesota and referred to Wisconsin for trial; (2) we could hold that the case was properly tried in Minnesota but Wisconsin law ought to apply; or (3) we could hold that the case should

be tried in Minnesota under Minnesota law. We find the third course of action to apply to this case for the reasons set forth herein.

(1) Forum non conveniens

Minnesota courts in their discretion may decline jurisdiction over transitory causes of action brought by non-resident citizens or non-citizens of this state when it fairly appears that it would be more equitable to have the case tried in another available court of competent jurisdiction. Johnson v. Chicago, Burlington & Quincy R. Co., 243 Minn. 58, 66 N. W. 2d 763 (1954). Although the cases speak of non-residents, it does not appear that the distinction between residents and non-residents is crucial, except insofar as it bears on the relative convenience of the parties.[2] The important factors to be considered in invoking the rule of forum non-conveniens were set out by the United States Supreme Court in Gulf Oil Corporation v. Gilbert, 330 U. S. 501, 508, 67 S. Ct. 839, 843, 91 L. ed. 1055, 1062 (1947), as follows:

> "* * * the relative ease of access to sources of proof; availability of compulsory process for attendance of unwilling, and the cost of obtaining attendance of willing, witnesses; possibility of view of premises, if view would be appropriate to the action; and all other practical prob-

[2] Fourth Northwestern National Bank of Minneapolis v. Hilson Industries, Inc., 264 Minn. 110, 117 N. W. 2d 732 (1962), decided that under the circumstances of that case there was no jurisdiction over a non-resident corporation. The case applied principles of forum non-conveniens and the "residency" of the plaintiff was not considered. The language of the Minnesota cases could be construed to require the court to retain jurisdiction over suits properly brought by resident plaintiffs, but cf. Savchuck v. Rush, —— Minn. ——, 245 N. W. 2d 624, 630 (1976), which indicates that resident plaintiffs are subject to forum non-conveniens. Savchuck was, however, vacated and remanded on other grounds by the United States Supreme Court, —— U. S. ——, 97 S. Ct. 2964, 53 L. ed. 2d 1086 (1977).

> lems that make trial of a case easy, expeditious and inexpensive. There may also be questions as to the enforcibility of a judgment if one is obtained. The court will weigh relative advantages and obstacles to fair trial. It is often said that the plaintiff may not, by choice of an inconvenient forum, 'vex,' 'harass,' or 'oppress' the defendant by inflicting upon him expense or trouble not necessary to his own right to pursue his remedy. But unless the balance is strongly in favor of the defendant, the plaintiff's choice of forum should rarely be disturbed."

The present action was one for declaratory judgment which did not require witnesses. The plaintiff was a resident of this state and the defendant did extensive business within the state, see, Stevens v. American Mutual Insurance Co. 234 A. 2d 305, 308 (D. C. App. 1967). The decedent worked in Minnesota for 15 years and drove to and from his home in Wisconsin; a probate representative was appointed in Minnesota; there is no showing such a representative was appointed in Wisconsin. The only "inconvenience" is that Minnesota law, if applied, might be more liberal than Wisconsin law. There does not appear to be harassment or oppression involved in this lawsuit.

We do not, however, decide the issue of whether the district courts may decline jurisdiction over a resident's cause of action because, even if they may, there was no abuse of discretion here in refusing to dismiss the case. The mere fact that Wisconsin law may be different from Minnesota law is not sufficient reason to decline jurisdiction. Chubbuck v. Holloway, 182 Minn. 225, 234 N. W. 314 (1951), cited in Myers v. Government Employees Insurance Co. 302 Minn. 359, 367, 225 N. W. 2d 238, 241 (1974).

(2) Choice of Laws.

Defendant argues that even if Minnesota retains jurisdiction, Wisconsin law should be applied to prohibit "stacking" of the uninsured motorist coverage. Plaintiff contends that Minnesota law applies, but that there is no true conflict because Wisconsin law permits stacking.[3]

In Milkovich v. Saari, 295 Minn. 155, 203 N. W. 2d 408 (1973), this Court adopted a "methodology of analysis" for resolving conflicts of laws questions.[4] The analysis involves the following "choice-influencing considerations": (1) predictability of result, (2) maintenance of interstate and international order, (3) simplification of the judicial task, (4) advancement of the forum's governmental interest, (5) application of the better rule of law. Before applying the five factor analysis, the court must first determine whether the choice of one law will be "outcome determinative," i. e., whether there is an actual conflict. Myers v. Government Employees Insurance Co. *supra.* Thus if Wisconsin law would allow stacking, then the choice of law question need not be reached and the result reached by the trial court should be affirmed.

(a) Conflict of law.

The first question which we must determine is whether there is a conflict between the interests of Minnesota and Wisconsin in the present case. Interests of Wisconsin, in the present case, are grounded in the residence of the plaintiff at the time of the accident and making of the contract. The Wisconsin Supreme Court has articulated its state policy of insuring *minimum* recovery on the part of victims of uninsured

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[3] The parties agree that if Minnesota law is applied, then stacking is permitted.

[4] The approach adopted was taken from the proposal made by Professor Robert Leflar in *Choice Influencing Considerations in Conflict Law,* 41 N. Y. U. L. Rev. 267 (1966).

Motorists. Nelson v. Employers Mutual Casualty Co. 63 Wis. 2d 558, 217 N. W. 2d 670 (1974). This policy may be based in part on a desire to keep insurance premiums low while providing some protections against uninsured motorists.

Minnesota contacts with the facts of the case begin with plaintiff's residence at the time of suit, defendant's license to do business, and defendant's conduct of business in the state. There is no indication that she moved to Minnesota in an effort to forum shop. Thus, as the "justice administering state" Minnesota has at least one significant contact.[5] If this were an ordinary contract case, as defendant suggests, the analysis of Minnesota interest might end with the observation that Minnesota has an interest in maximizing the tort recovery of plaintiffs who are involved in accidents involving uninsured motorists. This policy is clearly articulated in the Minnesota stacking cases beginning with Van Tassel v. Horace Mann Insurance Co. *supra*. The stated governmental interest is grounded in a policy of compensating injured plaintiffs to the maximum extent of their injuries, even where this recovery is greater than minimum requirements.[6]

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[5] This interest was recognized in Milkovich v. Saari, 295 Minn. 155, 165, 203 N. W. 2d 408, 415 (1973), in the court's approving of the reasoning of Kell v. Henderson, 47 Misc. 2d 992, 293 N. 4 S 2d 647 (1965), affirmed, 26 App. Div. 2d 595, 270 N. 4 S 2d 552 (1966).

[6] Several jurisdictions have applied the law of the place of contracting to interpreting uninsured motorist provisions: Brooks v. Pennsylvania Manufacturers' Association Insurance Co. 62 N. J. 583, 303 A. 2d 884 (1973) (New Jersey residence insufficient contact to apply New Jersey law where policy issuance, accident, and pending workers compensation claim was in Pennsylvania); Travelers Indemnity Co. v. Stearns, 358 A. 2d 402 (N. H. 1976) (accident occurring in New Hampshire insufficient to apply New Hampshire uninsured motorist law where policy issued in Massachusetts to Massachusetts resident for car principally garaged in Massachusetts); Grayson v. National Fire Insurance Co. 313 F. Supp. 1002 (D. Puerto Rico, 1970) (Puerto Rico accident New Jersy law applied to policy issued to New Jersey residents in New Jersey).

Minnesota's contacts with and interest in the facts of the present case are, however, more extensive because the contract involved is one concerning automobile liability insurance. Insofar as the contract is one of indemnity for tort recovery, the kinds of contacts relevant to tort cases may be considered. The facts show that plaintiff's decedent traveled to work in Minnesota for 15 years. Thus, the risk which was covered by the policy was located in Minnesota as well as Wisconsin.

One additional interest, not addressed by the parties, is Minnesota's interest in the administration of estates. According to the stipulated facts, plaintiff was appointed personal representative of her husband's estate by a Minnesota court. The plaintiff as an heir resides in Minnesota. This interest was recognized in Travelers Insurance Company v. Davis, 490 F. 2d 536 (3 Cir. 1974). The court applied Pennsylvania law in upholding an arbitrator's decision which allowed stacking. The suit was brought by the executor of a Pennsylvania decedent's estate on a policy issued in Massachusetts for a death occurring in Texas. In the present case, the interests of Wisconsin are stronger than those of Massachusetts in Travelers Insurance Co. v. Davis, *supra*, because the decedent resided there, but nonetheless Minnesota has substantial contacts and interests.[7]

Although the interests of the two states coincide to the extent that both seek compensation of the victims of accidents

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[7] The contacts of the plaintiff with Minnesota are *less* substantial than those of the plaintiff in Gillen v. United Services Automobile Association, 300 So. 2d 3 (Fla. 1974), in which the Florida Supreme Court applied its law favoring stacking to an insurance policy entered into in New Hampshire. In Gillen the plaintiff and decedent had moved to Florida prior to the accident and the accident occurred in Florida. Thus, the risk of the policy had little substantial relation to New Hampshire. In the present case the risk was located primarily in Wisconsin, but was also located in Minnesota.

involving uninsured motorists, they diverge on the policies and interests underlying stacking. The Minnesota interest in full compensation for her residents injured by uninsured motorists is sufficient to allow the application of Minnesota law if otherwise warranted.

The question of whether Wisconsin law permits excess insurance clauses and thus limits stacking is difficult because the Wisconsin Supreme Court has never ruled on the issue under the statute in force at the time this policy was written. Neither the briefs nor the arguments of counsel, however, persuade us that the legislature or Supreme Court of Wisconsin would overrule the decision in Nelson v. Employer's Mutual Casualty Co. *supra*, in which the court upheld the validity of such clauses.[8] Thus, we find that Wisconsin law, in effect at the time of the writing of the policy, allowed "excess insurance" clauses and that stacking would not be permitted if Wisconsin law were to apply.

(b) Choice of Law.

Defendant argues that application of the five tests mandate application of Wisconsin law. It argues that predictability of result, interstate order, and advancement of the forum's governmental interest mandate this result. Plaintiff argues, as did the trial court, that the Milkovich line of cases involving foreign torts makes the advancement of the forum's governmental interest and better rule of law the only relevant considerations. The discussion of interests is based on the peculiar hybrid nature of the problems involved in automobile insur-

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[8] The legislative history of the statute is unclear. Wis. Stat. 1967, § 204.30(5) [now Wis. Stat. 632.32(3)(a)] was amended several times. The effect of these amendments is unclear, but the present statute is the same as that construed in Nelson v. Employer's Mutual Casualty Co. 63 Wis. 2d 558, 217 N. W. 2d 670 (1974).

ance. The analysis should determine the choice of laws by examining both tort and contract considerations.

(1) Predictability of results.

Defendant argues that this factor favors application of Wisconsin law because the insurer of a vehicle is concerned with setting of standard rates. Plaintiff argues that this analysis is mistaken insofar as defendant was reasonably to be presumed to travel in Minnesota and insofar as Minnesota law would clearly apply if the accident had occurred in Minnesota. This consideration weighs slightly in defendant's favor, but the fact that one cannot predict automobile accidents because they are unplanned makes predictability of results less important in automobile liability insurance cases than in other contract cases.

(2) Maintenance of Interstate Order.

This concept requires that the state whose laws are ultimately applied have sufficient contacts with the facts in issue. Milkovich v. Saari, *supra*; Schwartz v. Consolidated Freightways Corp. of Delaware, 300 Minn. 427, 221 N. W. 2d 667 (1974). As seen above, the contacts of both states are substantial. Leflar points out that retaliation by one state for mere forum preference of another state may also be considered in a decision to apply non-forum law where forum contacts are minimal. 41 N. Y. U. L. Rev. 287. In the present case, if the contacts with Minnesota were less substantial, this would be a stronger consideration. Under this heading the court may also consider whether or not application of Minnesota law will encourage forum shopping. (Id.) This would also be a strong consideration in the present case if there was any evidence that plaintiff had moved to this state for the purpose of institution of suit. This consideration thus does not require application of Wisconsin law.

(3) Simplification of the Judicial Task.

The parties appear to agree that this issue is irrelevant because there is an applicable Wisconsin statute which this court is capable of interpreting.[9]

(4) Advancement of the Forum's Governmental Interest.

Minnesota's governmental interest will most clearly be advanced by application of Minnesota law. The state's interest in fully compensating resident accident victims and thus keeping them off welfare roles and enabling them to meet financial obligations will be met most adequately by allowing stacking. The advancement of Minnesota's interest is only partially inconsistent with the advancement of Wisconsin's in that Wisconsin is interested in giving the plaintiff some recovery, but at minimum limits.

The factual contacts with this state are more limited than the contacts which mandated application of Minnesota law in Schwartz v. Consolidated Freightways Corp. *supra.* In Schwartz the plaintiff, injured in Indiana, was a lifelong Minnesota resident and employed by a Minnesota corporation at the time of the accident. Because the present case involves a third party insurance beneficiary rather than a plaintiff personally injured in an accident, we are not convinced that the Minnesota contacts are, in themselves, sufficient to mandate application of our law. Thus, we must consider the remaining factor.

(5) The Better Rule of Law.

This consideration clearly mandates application of Minnesota law. Minnesota follows a majority of jurisdictions in allowing stacking and this fact has been recognized by the Wisconsin Supreme Court. Nelson v. Employers Mutual

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[9] This would be clearer if the Wisconsin Supreme Court had expressly ruled on the issue.

Casualty Co. *supra.* Although majority status is not by itself sufficient to make a rule "better," the decisions on stacking are fairly recent and well considered in light of current uses of automobiles. Additionally, the line of decisions in Minnesota which favor stacking is impliedly based on the premise that the rule allowing stacking is the better rule of law.[10] We believe that it is preferable to compensate victims of accidents to the full extent of their injuries and we believe that is the policy adopted by the legislature. The Minnesota rule is better because it requires the cost of accidents with uninsured motorists to be spread more broadly through insurance premiums than does the Wisconsin rule.

The trial court is affirmed.

PETERSON, Justice (Concurring specially).

I concur only because the result follows from the court's decision in Milkovich v. Saari, 295 Minn. 155, 203 N. W. 2d 408 (1973).[11]

OTIS, Justice (dissenting).

At the time of this accident all of the drivers, owners, and passengers in both vehicles were residents of Wisconsin and the accident occurred in Wisconsin. For the reasons stated in my dissent in Savchuk v. Rush, —— Minn. ——, 245 N. W. 2d 630 (1976), where as here the contract of insurance with defendant was also entered in Wisconsin I can not agree that the rights of the parties should be determined by Minnesota law.

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[10] In Van Tassel v. Horace Mann Ins. Co. 296 Minn. 181, 207 N. W. 2d 348 (1973), this court expressly stated that the most convincing rationale on stacking was offered by cases which held restrictive clauses invalid.

[11] For a critical analysis of that decision, see 58 Minn. L. Rev. 199.

APPENDIX C

(Caption)

ORDER

The above-entitled matter came on for hearing before the undersigned, Judge of District Court, sitting in Special Term on the 15th day of March, 1977 upon Plaintiff's Motion for Summary Judgment and Defendant's Motion to Dismiss. Appearances were as follows:

Fred Burstein, Esq., appeared on behalf of the plaintiff.

Mark M. Nolan, Esq. appeared on behalf of the defendant.

The Court, having considered the arguments of counsel and all pleadings and papers of record contained herein, makes its Order as follows:

IT IS HEREBY ORDERED:

1. Plaintiff's Motion for Summary Judgment is granted.
2. Defendant's Motion to Dismiss is denied.
3. The attached Memorandum shall become a part of this Order.

By the Court:
ALLEN OLEISKY
Judge of District Court

Dated this 22nd day of April, 1977.

MEMORANDUM

The relevant facts surrounding this lawsuit are as follows: The Plaintiff, Lavina Hague, is the widow of Ralph Hague who was killed in an automobile-motorcycle accident on July 1, 1974. The plaintiff is also the Personal Representative of the Estate of Ralph Hague.

At the time of the accident, the Hague's were residents of Hager City, Wisconsin which is located approximately one and one-half (1 1/2) miles from Red Wing, Minnesota. It should be noted that the deceased was employed in Red Wing for approximately fifteen (15) years prior to his death.

Regarding the accident which resulted in Mr. Hague's death, he was a passenger on a motorcycle owned and operated by his son, Ronald Hague. On the day of the accident, the motorcycle was struck from behind by an automobile owned and operated by Richard Borst. As a result of the impact, Mr. Hague sustained personal injuries which in turn resulted in his death. This accident occurred in Pierce County, Wisconsin which is adjacent to the Minnesota-Wisconsin border. After the accident and prior to the initiation of the instant action, Mrs. Hague moved to Red Wing, Minnesota.

The Borst vehicle was uninsured at the time of the accident. Mr. Hague owned three vehicles at the time of the accident all insured under one policy, with separate premium provisions for each automobile. Allstate Insurance Company insured these vehicles with an uninsured motorist provision of $15,000.00 for each automobile covered under the policy.

In the instant declaratory judgment action, the plaintiff is suing the defendant, Allstate Insurance Company, under the uninsured motorist coverage provided by the policy for $45,000.00, which represents the aggregate amount of the uninsured coverage relating to each of the three automobiles owned by the deceased and insured by the defendant at the time of the accident.

Each party have motions before the court at this time. Defendant moves this Court for an Order dismissing the action without prejudice on the grounds of forum non conveniens. Plaintiff moves the Court for an Order granting her summary judgment in the Declaratory Judgment action.

The crux of defendant's Motion based on forum non conveniens is that plaintiff has engaged in forum shopping with the result being a subversion of justice. In conjunction with this argument, defendant alleges that Wisconsin law is de-

terminative of the issues herein. Based upon the arguments of forum non conveniens and the necessity to apply Wisconsin law, defendant moves to dismiss. In support of this argument defendant states that this action involves questions of law. Such being the case, convenience for plaintiff is of no relevance.

Naturally, plaintiff argues that the Minnesota courts have jurisdiction to entertain this matter. There is no dispute that the plaintiff herein is a resident of Minnesota and was so prior to the commencement of this action. Likewise, the defendant does business within Minnesota and subject to personal service in this state. Such being the case, there can be no argument with the proposition that this Court does have personal jurisdiction over all of the parties herein.

The secondary issue is which state law governs in the action. In Minnesota by virtue of the decision in *Van Tassel v. Horace Mann Insurance Company*, 296 Minn. 181, 207 N.W.2d 348 (1973), the stacking of uninsured motorist policy provision limits was specifically sanctioned.

Defendant argues that the law in Wisconsin does not permit stacking of uninsured motorist policy provision limits, and, since the accident occurred in Wisconsin, the rule of law in Wisconsin overrides the *Van Tassel* doctrine in Minnesota. The argument of counsel give rise to the issue of conflicts of law.

In passing on the issue of stacking in *Van Tassel, supra*, the Minnesota Supreme Court stated the following:

> [I]f the question must be resolved on the basis of who gets a windfall, it seems more just that the insured who has paid a premium should get all he paid for rather than the insurer should escape liability for that for which it collected a premium. . . .

207 N.W. 2d at 352.

Likewise the same rationale should and does apply to the issue as to conflicting laws. The Minnesota Supreme Court has adopted the rule and rationale of other courts in rejecting the rule of Rex Loci Delicti, specifically New York courts, and has indicated its determination to replace lex loci with a more rational choice-of-law methodology. *Milkovich v. Saari*, 295 Minn. 155, 203 N.W. 2d 408, 1973. In *Milkovich*, the Court opted for following the "better-law-concept" in choice of law situations. The compelling consideration therein, and in the instant case, are the advancement of the forums legitimate governmental interests and the application of the better law. The rule of *Milkovich* has replaced the traditional choice-of-law rules with a flexible approach which takes into account policy as well as factual considerations in arriving at a choice of law in a given situation.

The court placed great weight upon an article written by Professor Robert Leflar, wherein a five point methodology was set forth as an aid for evaluating conflicts problems. R. Leflar, "Choice-Influencing Considerations in Conflicts Law," 41 N.Y.U. L.Rev. 267, 279. In *Milkovich*, the Court pointed out that only two of Professor Leflar's rules are relevant to tort cases, specifically, advancement of the forum's governmental interest and application of the better rule of law. Applying these tests to the instant case, it is clear that the Minnesota law is the proper law to be applied herein.

The Minnesota Supreme Court elaborated upon *Milkovich* in *Schwartz v. Consolidated Freightways Corporation of Delaware*, 300 Minn. 487, 251 N.W. 2d 665 (1974). The Court therein held as follows:

> Once jurisdiction attaches, the forum may, subject to the rather minimal due process standards, apply its own choice-of-law rules to determine what law governs the

case. *Crider v. Zurich Insurance Co.*, 380 39, 85 S. Ct. 769, 13 L. Ed. 2d 641 (1965); *Home Insurance Co. v. Dick*, 281 U.S. 397, 50 S. Ct. 338, 74 L. 3d. 926 (1930). See also Professor Leflar's articles entitled "States' Rights in Conflicts of Law," 19 Ark. L. Rev. 142.

221 N.W. 2d at 668.

Based upon the authority of *Milkovich* and *Schwartz*, it is clear that this Court has both subject matter and personal jurisdiction for the purpose of entertaining this action in Minnesota. The rule in Wisconsin inhibiting stacking in inimical to the public policy of Minnesota which permits stacking. Since the plaintiff is a Minnesota resident entitled to the protection of her interests by the Courts of this state, its (Minnesota's) interest, her welfare and the maintenance of Minnesota's public policy principles require that we ignore the anti-stacking policy of Wisconsin in favor of the rule permitting the same in Minnesota. Accordingly, plaintiff is entitled to summary judgment.

A.O.

APPENDIX D

State of Minnesota
Supreme Court—ss.

MANDATE

THE STATE OF MINNESOTA

To the Honorable Judge and Officers of the District Court within and for the County of Hennepin Greeting:

WHEREAS, Lately in your Court, in action therein pending, entitled Lavinia Hague, Personal Representative of the Estate of Ralph Alvin Hague, deceased, Plaintiff, vs. Allstate Insurance Company, Defendant, a certain order was entered therein April 22, 1977 from which action of your Court an appeal thereafter was taken to this Court;

AND WHEREAS, The said cause came on to be heard before our Supreme Court, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the order of the Court below herein appealed from, be, and the same hereby is, in all things affirmed and that judgment be entered accordingly. A copy of the entry of judgment thereupon in this Court is herewith transmitted and made part of this remittitur.

NOW THEREFORE, This MANDATE is to you directed and certified, to inform you of these proceedings in our Supreme Court, in said hereinbefore mentioned cause, and the same is hereby and herewith REMANDED to your Court for such other or further record and proceedings therein as may be by law necessary, just and proper, under and by virtue of the said order herein made.

WITNESS, The Honorable ROBERT J. SHERAN Chief Justice of the Supreme Court aforesaid, and the seal of said Court at St. Paul, this September 19, 1979.

JOHN McCARTHY
Clerk of the Supreme Court
By WAYNE TSCHIMPERLE
Deputy

STATE OF MINNESOTA, SUPREME COURT

LAVINIA HAGUE, Personal Representative
of the Estate of Ralph Alvin Hague, Deceased,
Respondent,

vs.

ALLSTATE INSURANCE COMPANY,
Appellant.

JUDGMENT

Pursuant to orders of Court heretofore duly made and entered in this cause it is determined and adjudged that the order of the Court below, herein appealed from, to-wit, of the District Court within and for the County of Hennepin be and the same hereby is in all things affirmed.

And it is further determined and adjudged that respondent herein, do have and recover of appellant herein the sum and amount of Two Hundred Sixty-Five and 23/100 Dollars, ($265.23) costs and disbursements in this cause in this Court, and that execution may be issued for the enforcement thereof.

Dated and signed September 19, 1979.

By the Court
Attest:
JOHN McCARTHY
Clerk

STATEMENT FOR JUDGMENT

Statutory Costs: $25.00
Printer: $240.23
Total: $265.23

Satisfaction of Judgment filed

A MOTION TO DISPENSE WITH THE PRINTING OF THE APPENDIX WAS MADE AND GRANTED